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FM AMEMBASSY TOKYO
TO RUEHC/SECSTATE WASHDC IMMEDIATE 9991
INFO RUEHBJ/AMEMBASSY BEIJING IMMEDIATE 7193
RUEHRL/AMEMBASSY BERLIN IMMEDIATE 1559
RUEHBY/AMEMBASSY CANBERRA IMMEDIATE 2971
RUEHDJ/AMEMBASSY DJIBOUTI IMMEDIATE 0001
RUEHLO/AMEMBASSY LONDON IMMEDIATE 2311
RUEHMK/AMEMBASSY MANAMA IMMEDIATE 0204
RUEHMS/AMEMBASSY MUSCAT IMMEDIATE 0001
RUEHFR/AMEMBASSY PARIS IMMEDIATE 6375
RUEHYN/AMEMBASSY SANAA IMMEDIATE 0148
RUEHFK/AMCONSUL FUKUOKA IMMEDIATE 1819
RUEHNH/AMCONSUL NAHA IMMEDIATE 4169
RUEHOK/AMCONSUL OSAKA KOBE IMMEDIATE 5607
RUEHKS/AMCONSUL SAPPORO IMMEDIATE 2378
RHMFISS/CDR USCENTCOM MACDILL AFB FL IMMEDIATE
RUEAIIA/CIA WASHDC IMMEDIATE
RUEKJCS/CJCS WASHINGTON DC IMMEDIATE
RUENAAA/CNO WASHINGTON DC IMMEDIATE
RUYNAAAC/COMNAVFORJAPAN YOKOSUKA JA IMMEDIATE
RHHMHBA/COMPACFLT PEARL HARBOR HI IMMEDIATE
RHOVVKG/COMSEVENTHFLT IMMEDIATE
RHMFISS/DEPT OF HOMELAND SECURITY WASHINGTON DC IMMEDIATE
RHEFDIA/DIA WASHINGTON DC IMMEDIATE
RHHMUNA/HQ USPACOM HONOLULU HI IMMEDIATE
RUEKJCS/JOINT STAFF WASHINGTON DC IMMEDIATE
RHEHAAA/NSC WASHDC IMMEDIATE
RUEKJCS/SECDEF WASHDC IMMEDIATE
RUENAAA/SECNAV WASHINGTON DC IMMEDIATE
RUEHKO/USDAO TOKYO JA IMMEDIATE
RUEHBS/USEU BRUSSELS IMMEDIATE
RHMFISS/USFJ IMMEDIATE

C O N F I D E N T I A L SECTION 01 OF 04 TOKYO 000072

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JA

SUBJECT: JAPAN FACES NO LEGAL CONSTRAINTS TO ANTI-PIRACY
DISPATCH: FOREIGN MINISTRY LEGAL ADVISOR

REF: A. 8 JAN 2009 EMBASSY TOKYO DAILY ACTIVITY REPORT

[1](#)B. 08 TOKYO 3405

[1](#)C. 08 TOKYO 3535

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Classified By: AMBASSADOR J. THOMAS SCHIEFFER, REASONS 1.4(B) and (D).

[1](#)1. (C) Summary: Ministry of Foreign Affairs (MOFA)
International Legal Affairs Bureau Director General Koji
Tsuruoka told the DCM 8 January that Japan is working rapidly
to determine how best to contribute in the near term to Horn
of Africa (HOA) multi-lateral anti-piracy efforts. Tsuruoka
also explained that the Japanese government is preparing new
legislation should current law prove to be insufficient for
Japan to participate effectively. Any resistance to an early
dispatch of Japan Maritime Self-Defense Forces (JMSDF) assets
is political, according to Tsuruoka, as there are no
constitutional or collective self defense issues preventing
it. Tsuruoka admitted, however, that current legislation
only allows Japan to defend "Japanese interests" and may
limit the scope of operations of its forces. Tsuruoka

believes the JMSDF is most likely to lead the effort, given its relatively greater operational capability than the Japan Coast Guard (JCG). While Japan may face fewer legal obstacles than media reports and opponents of the dispatch may suggest, there are political and operational hurdles to clear before any proposed contribution becomes reality. End Summary.

COMMENT:

12. (C) Tsuruoka makes a convincing legal case that Japan has the requisite legal authority to dispatch MSDF vessels to the Horn of Africa even without implementing legislation. Nevertheless, the speed with which Japan will be able to deploy assets to the Indian Ocean will be determined as much by political (Ref A) and operational (Ref C) factors as legal ones. The Prime Minister has given a clear direction to make a dispatch happen, but actual implementation has proven more complicated than he may have imagined. The latest wrinkle involves a debate within the Japanese government about whether the MSDF refueler assigned to support "counter-terrorism" operations under OEF can assist coalition ships engaged in the newly created anti-piracy combined task force (CTF-151). None of these hurdles are insurmountable, but as MOFA builds its legal case, the MSDF and JCG will need more time to iron out operational details and the ruling coalition to craft a political consensus. In the interim, there appears to be no reduction in political support for Japan taking part in the anti-piracy effort. End Comment.

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Two Track Approach - Now and Later

13. (C) Tsuruoka told the DCM that the Japanese government is thoroughly considering what can be done under the current legal framework. He stressed that legal review of current legislation is ongoing and that while Japan understands the need to act as soon as possible, a particular deadline to completing its analysis did not exist. Tsuruoka said Japan is studying what additional legislation might be necessary above and beyond what the JMSDF is already enabled to do as the current law may not be "sufficiently broad" in light of existing threats.

14. (C) There is "plenty that could be done today," Tsuruoka stressed, emphasizing that Japan should take action sooner rather than later. While dealing with piracy is a learning process for Japan, he said the value of Japan contributing something and "bringing a presence" to the region was much higher than "debating the issue in government conference rooms." He did say, however, that in drafting of new anti-piracy legislation, Japan was facing challenges similar to other countries that did not specifically outlaw piracy. Tsuruoka highlighted that as with other nations affected by piracy, Japan was struggling with how best to contribute to international efforts as well as with which legal procedures to apply to pirates if they are captured. Tsuruoka said Japan would consult and coordinate with other countries as they create new legislation.

No Constitutional Issues - They're Pirates!

15. (C) Tsuruoka dismissed Japanese media reports that a JMSDF anti-piracy dispatch and associated use of force raised serious constitutional questions. Simply because the aggressors in the matter are pirates, and therefore non-state actors, issues of the Japanese ban on collective self defense and the Article 9 prohibition on the use of force except in self-defense do not arise, Tsuruoka stressed. Actions taken

against pirates are "not an act of war," Tsuruoka added, emphasizing that potential JMSDF anti-piracy actions would be for the purpose of law enforcement and securing the safety of Japanese interests from a "public enemy." He admitted, however, that it was not MOFA's responsibility to interpret the constitution, but that of the Cabinet Legislative Bureau. He said this constitutional interpretation was ongoing.

16. (C) While the debate in Japan continues over which force is the most appropriate to dispatch, once a legal decision has been made to send Japanese vessels Tsuruoka said the JMSDF was the most likely actor to operate so far away from

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Japan. Tsuruoka noted that Prime Minister Aso could order the JMSDF to be dispatched with the law enforcement authority of the JCG, and that this would minimize concerns over the use of force or constitutionality. As the JCG's authority to arrest criminals was clearly defined in Japanese law, Tsuruoka said the JMSDF could be most effective operating under this legislation, at least for an initial dispatch.

Whom, And What, To Protect

17. (C) Japanese media have raised questions in reporting on the HOA piracy problem as to exactly how much Japan could participate, once ships have been dispatched to the region. Japanese government interlocutors have also questioned (reftel) whether the JMSDF would be authorized, under current legislation to protect third country ships under pirate attacks. Noting that the main tasking of JMSDF vessels dispatched to HOA waters would be to protect Japanese interests, Tsuruoka said incidents where Japanese interests were less clear would have to be addressed on a case-by-case basis. He said that if a ship under attack was Japanese-flagged, Japanese-owned, or had Japanese citizens on board, there would be no legal issue with the JMSDF responding. (Note: Only a very small percentage of vessels that transit HOA waters are Japanese-flagged, but Japanese companies own over 2000 ships. End note.) In other instances, Tsuruoka pointed out, many vessels that pass through the HOA region are headed for Japan with Japanese-owned or Japanese-bound cargo, even though they may sail under a flag of convenience and with a non-Japanese crew. In instances such as these, Tsuruoka said Japan would have to evaluate a response if and when the situation arose. Describing it as a "learning process" for Japan, Tsuruoka said it would be impossible to "draw a line" as to what the JMSDF would and would not be able to protect until actual incidents occurred.

We're Working On It, Please Don't Push Us

18. (C) Japan clearly understands the need to contribute to the multi-lateral HOA anti-piracy effort and is working quickly to evaluate ways in which to participate, Tsuruoka said. He appreciated the fact that the U.S. has not "pushed" Japan on the issue, adding that it was better for Japanese counter piracy efforts to remain homegrown. He understood the urgency of the situation and said that at the appropriate time Japan would likely come to the U.S. and other countries for advice and assistance on the most appropriate ways to contribute. External pressure, in the current political

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environment, would be counterproductive and could be used for political purposes by those in opposition parties who do not support Japan's anti-piracy countermeasures, according to Tsuruoka.
SCHIEFFER